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No. 84-1473

IN THE

Supreme Court of the United States

October Term, 1984

WILLIAM C. HOFFMAN,

Petitioner,

vs.

DAVID S. HENDERSON,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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1985—Nov

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QUESTION PRESENTED

1. WHETHER EMPLOYMENT CONTRACTS MADE IN MINNESOTA BETWEEN RESPONDENT, A MINNESOTA RESIDENT, AND PETITIONER, A MINNESOTA LAWYER, FOR LEGAL REPRESENTATION IN AN ALASKAN WORKERS' COMPENSATION PROCEEDING FOR A WORK-RELATED INJURY SUSTAINED IN ALASKA, ARE INVALID WHEN THE CONTRACTS ARE VOID UNDER BOTH ALASKA AND MINNESOTA WORKERS' COMPENSATION LAWS.

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STATEMENT OF THE CASE

Respondent agrees with petitioner's Statement of the Case except for his interpretation of the opinion published by the Minnesota Court of Appeals.

Although the Court of Appeals did not mention petitioner's arguments regarding Federal Constitutional claims, it was under no obligation to do so—it did not have to reach that part of petitioner's claim. Instead, the Court of Appeals found that state law governed the regulations on awards of attorney's fees, and that the State of Alaska, in this case, had both sufficient contacts with the subject matter and strong interests in having its laws applied to the petitioner's claim.

SUMMARY OF ARGUMENT

The retainer agreements executed by the petitioner and respondent are governed by Alaskan state law and are illegal and void under Alaska workers' compensation laws, as well as Minnesota state workers' compensation laws.

The Minnesota Appellate Courts properly acted within their sovereign powers in declaring that Alaska's workers' compensation law applied to petitioner's claim and that the retainer agreements had no effect in establishing the amount of attorney's fees to which the petitioner was entitled.

ARGUMENT

Petitioner's application for a Writ of Certiorari is not based on any arguable claim that should be heard by the Supreme Court of the United States. His claim arises under state law, and state law alone.

Respondent will not argue with petitioner on the superficial jurisdictional distinctions as to state authority over the parties' claims and counter-claims. This Court has itself denied certiorari for similar cases regarding attorney's fees under state workers' compensation laws and has deferred to the states' application of those laws. *Sarja v. Pittsburg Steel Co.*, 191 N.W. 742 (1923), *Cert. Denied*, 262 U.S. 754, 43 S.Ct. 702, 67 L.Ed. 1216, *Writ Dismissed*, 262 U.S. 685, 44 S.Ct. 180, 68 L.Ed. 505 (1924). The petitioner cannot now be heard to assert that this longstanding policy of deferral should be changed.

As an attorney licensed in the State of Minnesota, the petitioner is charged with knowing the laws of his own state, and any other state in which he practices or exercises his skills. *Johnson v. Nelson*, 150 N.W. 620 (Minn. 1915). The petitioner, as an attorney, was charged with the knowl-

edge that his retainer agreements with the respondent were void and illegal under the workers' compensation laws of both Alaska and Minnesota. The workers' compensation laws of both states specifically provide for the regulation of attorney's fees and the approval of any retainer agreements signed between claimants and their representing attorneys. Alaska Stat. Sec. 23.30.145 (1969), Minn. Stat. Sec. 176.081 (1976).

The Minnesota Court of Appeals, and the Supreme Court, by its dismissal of the Petition for Discretionary Review, properly charged the petitioner with constructive knowledge of state laws regulating attorney's fees.

Also, the Court of Appeals properly applied Alaska law regarding these fees by establishing: 1) The application of Alaska law was constitutional because Alaska had "significant contacts" with the parties' retainer agreement (petitioner had to avail himself of Alaska workers' compensation law to recover on the retainer); and, 2) Alaska law applied under Minnesota's application of its adopted choice of law rule. Alaska had a strong governmental interest in both petitioner's and respondent's claims under the Alaska workers' compensation statute.

Minnesota, Alaska, and many other states with workers' compensation statutes establish their own guidelines regarding the award or approval of attorneys' fees in workers' compensation claims. In fact, approximately three-fourths of the states have statutes regulating attorneys' fees under the workers' compensation cases. *Larson's Workmans' Compensation Law*, Vol. 3, Sec. 83.13 (1976).

Attorneys have challenged many of these statutes claiming the fee regulation as unconstitutional and violative of the guarantees of due process found in both the Federal

and State Constitutions. *Without exception,* every Court that has addressed the issue, including the Minnesota and United States Supreme Court, has affirmed the constitutionality of statutes that limit attorneys' fees recoverable in workers' compensation cases, or establish procedures for setting such fees. *Blair v. Village of Coleraine,* 180 Minn. 388, 231 N.W. 193 (Minn. 1930); *Cranston v. Industrial Commission,* 246 Wisc. 187, 16 N.W.2d 865 (1944); *Schilling v. Industrial Accident Commission,* 47 Cal.App. 190, 19 P. 373 (1920); *Sarja v. Pittsburg Steel Co.,* 191 N.W. 742, *Cert. Denied,* 262 U.S. 754, 43 S.Ct. 702, 67 L.Ed. 1216 (Minn. 1923), *Writ Dismissed,* 262 U.S. 685, 44 S.Ct. 180, 68 L.Ed. 505 (1924).

State power to regulate its workers' compensation system with respect to controlling attorneys' fees is constitutional. The state has a strong interest in maintaining a reliable functional system to insure that injured workers receive adequate compensation for injuries, and that compensation warded is not reduced by excessive attorneys' fees.

This Court has not invaded the states' interests in regulating workers' compensation systems regarding the award of attorneys' fees. In fact, it has denied certiorari in similar cases. *Sarja,* supra. The United States Supreme Court should deny the petitioner's request for certiorari in this instance.

CONCLUSION

Petitioner's claim is governed by state law, and state law alone. A just and final determination was made regarding petitioner's claims for attorneys' fees in the Minnesota state courts. The Supreme Court of the United States should deny petitioner's request for a Writ of Certiorari.

Dated: April 10, 1985.

Respectfully submitted,

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